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Attorney for Plaintiff NAOMI TAPIA, individually and on behalf of other members of the general public similarly situated

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

NAOMI TAPIA, individually and on behalf of other members of the general public similarly situated.

Plaintiff.

V

ZALE DELAWARE INC. d/b/a ZALE CORPORATION, a Delaware Corporation; and DOES 1 through 50, inclusive

## Defendants

CASE NO. '13CV1565 WQHNLS

## COLLECTIVE AND CLASS ACTION

**COMPLAINT FOR:**

1. VIOLATION OF FAIR LABOR STANDARDS ACT OF 1938;
2. VIOLATION OF CALIFORNIA LABOR CODE;
3. VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 17200 *et seq.*; and

***Demand for Jury Trial***

*Document Electronically Filed*

1 COMES NOW Plaintiff NAOMI TAPIA ("TAPIA"), individually and on behalf of all others  
 2 similarly situated, and alleges for her Complaint as follows:

3 **PARTIES, JURISDICTION AND VENUE**

4 1. At all relevant times herein, TAPIA was and is an individual domiciled in the County of  
 5 Imperial, State of California.

6 2. Plaintiff is informed and believes and thereon allege that at all relevant times mentioned herein,  
 7 Defendant ZALE DELAWARE INC. d/b/a ZALE CORPORATION ("ZALE"), a Delaware  
 8 Corporation, was and is doing business throughout the state, including the County of Imperial,  
 9 State of California.

10 3. Venue is proper because certain acts constituting the below violations were committed in  
 11 Imperial County. 28 U.S.C. § 1391. Thus, venue is proper because the County of Imperial is  
 12 within the Southern District of California.

13 4. Plaintiff is presently unaware of the true names, capacities and liability of Defendants named  
 14 herein as DOES 1 through 50, inclusive. Accordingly, Plaintiff will seek leave of court to amend  
 15 this Complaint to allege their true names and capacities after the same have been ascertained.

16 5. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named  
 17 Defendants is responsible in some manner for the wrongs and damages as herein alleged, and in  
 18 so acting was functioning as the agent, servant, partner, and employee of the co-defendants, and  
 19 in doing the actions mentioned below, was acting within the course and scope of his or her  
 20 authority as such agent, servant, partner, and employee with the permission and consent of the  
 21 co-defendants. Plaintiff's injuries as herein alleged were proximately caused by said Defendants.  
 22 Wherever it is alleged herein that any act or omission was done or committed by any specially  
 23 named Defendant or Defendants, Plaintiff intends thereby to allege and do allege that the same  
 24 act or omission was also done and committed by each and every Defendant named as a DOE,  
 25 both separately and in concert or conspiracy with the named Defendant or Defendants.

26 6. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,  
 27 including DOES 1 through 50, are and at all times herein mentioned were either individuals, sole  
 28 proprietorships, partnerships, registered professionals, corporations, alter egos or other legal

1 entities which were licensed to do and/or were doing business in the County of San Diego, state  
 2 of California at all times relevant to the subject matter of this action.

3 7. The Fair Labor Standards Act of 1938 (“FLSA”), codified as 29 U.S.C. section 201 *et seq.*,  
 4 authorizes court actions by private parties to recover damages for violations of the FLSA’s wage  
 5 and hour provisions. Jurisdiction over Plaintiff’s FLSA claims is based upon 29 U.S.C. section  
 6 216(b) and 28 U.S.C. section 1331.  
 7 8. Under 28 U.S.C. section 1337, this Court has supplemental jurisdiction over Plaintiff’s state law  
 8 claims because the state claims are so related to the FLSA claims that they form part of the same  
 9 case of controversy. Additionally, jurisdiction over Plaintiff’s state law claims is based upon the  
 10 Class Action Fairness Act, 28 U.S.C. section 1332(d)(2)(A), because the amount in controversy  
 11 exceeds five-million dollars (\$5,000,000.00), exclusive of interest and costs, and because the  
 12 parties are diverse.

13 **COLLECTIVE, CLASS AND REPRESENTATIVE ALLEGATIONS**

14 9. Plaintiff brings Count I (violation of the FLSA), as a nationwide “opt-in” collective action  
 15 pursuant to 29 U.S.C. section 216(b), on behalf of herself and the following persons:

16 All current and former nonexempt employees of ZALE  
 17 DELAWARE INC. d/b/a ZALE CORPORATION (“ZALE”)  
 18 who have worked at any location in the United States at any  
 time within the last three years.

19 10. Plaintiff brings Count II (violation of California Labor Code) as a class action pursuant to  
 20 Federal Rule of Civil Procedure 23, on behalf of herself and the following persons:

21 All current and former nonexempt employees of ZALE  
 22 DELAWARE INC. d/b/a ZALE CORPORATION (“ZALE”)  
 23 who have worked in the state of California at any time within  
 24 the last three years.

25 11. Plaintiff brings Count III (violation of California Business & Professions Code section 17200  
 26 *et seq.*) as a class action pursuant to Federal Rule of Civil Procedure 23, on behalf of herself and  
 27 as the class representative of the following persons:

28 All current and former nonexempt employees of ZALE  
 29 DELAWARE INC. d/b/a ZALE CORPORATION (“ZALE”)  
 30 who have worked in the state of California at any time within  
 31 the last four years.

1       12. The FLSA claim is pursued on behalf of those who opt-in to this case, pursuant to 29 U.S.C.  
2       section 216(b).

3       13. The state law claims, if certified for class-wide treatment, are pursued on behalf of all similarly  
4       situated persons who do not opt-out of the class.

5       14. Plaintiff, individually and on behalf of other similarly situated Count I employees, seeks relief  
6       on a collective basis challenging, among other FLSA violations, ZALE's uniform practice of  
7       failing to pay employees for all hours worked, including minimum and overtime compensation,  
8       due to the fact it failed to properly calculate the "Regular Rate of Pay" and failed to pay  
9       employees for all hours worked. The facts for these allegations are set forth below in Count I.  
10      The number and identity of other plaintiffs yet to opt-in and consent to be party-plaintiffs may  
11      be determined from ZALE's records and potential class members may easily and quickly be  
12      notified of the pendency of this action.

13      15. Plaintiff, individually and on behalf of other similarly situated Count II employees, seeks relief  
14      on a class-wide basis challenging, among other California Labor Code violations, ZALE's  
15      practice of failing to pay employees for all hours worked, including overtime compensation,  
16      failing to properly calculate and pay overtime compensation that was recorded, failing to provide  
17      accurate itemized wage statements, failing to provide uninterrupted Meal and Rest Periods, and  
18      failing to pay all wages due at cessation of employment. The facts for these allegations are set  
19      forth below in Count II. The number and identity of other plaintiffs may be determined from  
20      ZALE's records, and potential class members may easily and quickly be notified of the pendency  
21      of this action.

22      16. Plaintiff, individually and on behalf of other similarly situated Count III employees, seeks relief  
23      on a class-wide basis challenging, among other Business & Professions Code section 17200 *et*  
24      *seq.* violations, ZALE's practice of failing to comply with the FLSA and California Labor Code,  
25      in violation of California's unlawful competition laws. The facts for these allegations are set  
26      forth below in Count III, and the underlying facts for these unlawful violations are set forth  
27      below in Count II. The number and identity of other plaintiffs may be determined from ZALE's  
28      records, and potential class members may easily and quickly be notified of the pendency of this

1 action.

2 17. The approximately **3,500** member Count I class is ascertainable via their experience as current  
3 or former employees of ZALE who experienced its uniform compensation policy.

4 18. The approximately **1,200** member Count II class is ascertainable via their experience as current  
5 or former employees of ZALE who experienced its uniform compensation policy.

6 19. The approximately **1,500** member Count III class is ascertainable via their experience as current  
7 or former employees of ZALE who experienced its uniform compensation policy.

8 20. Plaintiff's claims satisfy the numerosity, commonality, typicality, adequacy and superiority  
9 requirements of a class action pursuant to Federal Rule of Civil Procedure 23.

10 21. The Classes satisfy the numerosity standards. The Classes are believed to number in excess of  
11 one-thousands persons. As a result, joinder of all Class Members in a single action is  
12 impracticable. Class Members may be informed of the pendency of this class action through  
13 direct mail.

14 22. There are questions of law and fact common to the Classes that predominate over any questions  
15 affecting only individual members. The questions of law and fact common to the Classes arising  
16 from ZALE's actions include, without limitation, the following:

17 A. Whether ZALE failed to properly pay class members the minimum wage in accordance  
18 with federal law;

19 B. Whether ZALE failed to properly pay class members the overtime wages due and  
20 owing to them in accordance with federal and California law;

21 C. Whether ZALE failed to provide accurate itemized wage statements to class members;

22 D. Whether ZALE knowingly and intentionally failed to provide accurate itemized wage  
23 statements to class members;

24 E. Whether ZALE failed to maintain accurate records for class members in accordance  
25 with federal and California law;

26 F. Whether ZALE failed to provide uninterrupted meal and rest periods to Class  
27 Members, and/or failed to possess compliant policies for such meal and rest periods;

28 G. Whether ZALE willfully failed to pay all compensation due and owing to class

members at termination of employment; and

H. Whether ZALE's uniform conduct constituted a violation of California Business & Professions Code section 17200 *et seq.*

23. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity to other available methods for the fair and efficient adjudication of the state law claims.

24. Plaintiff's claims are typical of those of the Classes, in that Class Members have been employed in the same or similar positions as Plaintiff and Class Members were subject to the same or similar unlawful practices as Plaintiff.

25. A class action is the appropriate method for the fair and efficient adjudication of this controversy. ZALE has acted or refused to act on grounds generally applicable to the Classes. The presentation of separate actions by individual Class Members would create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct of ZALE, and/or substantially impair or impede the ability of Class Members to protect their interests.

26. Plaintiff is an adequate representative of the Class because she is a member of the Class and her interests do not conflict with the interests of Class Members whom she seeks to represent. The interests of the Class Members will be fairly and adequately protected by Plaintiff and the undersigned counsel, who have extensive experience prosecuting complex wage and hour, employment and class action litigation.

27. Maintenance of this action as a class action is a fair and efficient method for adjudication of this controversy. It would be impracticable and undesirable for each class member who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

28. Plaintiff asserts this litigation as a concerted action which seeks to improve the wages and/or working conditions for all of Defendant's employees who experience its illegal policies and/or practices.

## **FACTUAL BACKGROUND**

2 29. In or about May 2012, Plaintiff NAOMI TAPIA began working for Defendant ZALE in a  
3 nonexempt position as a jewelry consultant. Plaintiff TAPIA worked at Defendant's "Zales  
4 Jewelers: Imperial Valley Mall" location at all times relevant herein. Plaintiff's active  
5 employment continued until her involuntary termination in or about November, 2012.  
6 Throughout her employment, Plaintiff performed her job in a capable and competent manner and  
7 was commended for doing so.

8 30. Throughout the term of her employ, Plaintiff and all other class members were and are currently  
9 denied the benefits and protections of the FLSA and the California labor Code, due to the  
10 institutionalized pay practices of Defendant, standard as to all Defendant's non-exempt  
11 employees.

## COUNT I

**VIOLATION OF FAIR LABOR STANDARDS ACT OF 1938**  
(Brought against ZALE and DOES 1-50 by Plaintiff,  
individually and on behalf of all others similarly situated)

15 31. Plaintiff re-asserts and re-alleges the allegations set forth in paragraphs 1 through 30.

16 32. At all times material herein, Plaintiff has been entitled to the rights, protections and benefits

17 provided under the FLSA, codified as 29 U.S.C. section 201, *et seq.*

18 33. The FLSA regulates, among other things, the payment of wages by employers whose employees

19 are engaged in interstate commerce, or engaged in the production of goods for commerce, or

20 employed in an enterprise engaged in commerce or in the production of goods for commerce. 29

21 U.S.C. § 207(a)(1).

22 34. ZALE is subject to the minimum wage and overtime pay requirements of the FLSA because it

23 is an enterprise engaged in interstate commerce and its employees are engaged in commerce.

24 35. ZALE violated the FLSA by failing to provide proper and complete minimum wage and overtime

25 compensation to Plaintiff and all other employees similarly situated, for the reasons discussed

26 below.

27 36. 29 U.S.C. section 206(a) requires employers to pay their employees the minimum wage for each

28 hour worked.

1       37. 29 U.S.C. section 207(a)(1) provides, in pertinent part, the following: “no employer shall employ  
2       any of his employees . . . for a workweek longer than forty hours unless such employee receives  
3       compensation for his employment in excess of the hours above specified at a rate not less than  
4       one and one-half times the regular rate at which he is employed.”

5       38. The first cause of the violation was the failure to pay overtime compensation to when employees  
6       work in excess of 40 hours per week. As an example, attached hereto as **Exhibit A**, is Ms.  
7       Tapia’s payroll register report for the pay date July 1, 2012. The record shows Ms. Tapia worked  
8       40.75 hours during the first week, but was not provided any overtime compensation.

9       39. The second cause of the violation was the failure to incorporate the value of employee  
10       “commissions” into the Regular Rate of Pay calculation. As a benefit to employment, ZALE  
11       provided the Class Members with “commissions.” (See **Ex. A.**) Federal law requires that all  
12       value received via an employment relationship—including the value of commissions—be  
13       factored into the calculation of the Regular Rate of Pay and subsequently used to factor and  
14       compensate at the Overtime Rate of Pay. 29 CFR 778.117. The improper calculation of the  
15       Regular Rate of Pay leads to the failure to properly calculate the Overtime Rate of Pay, and the  
16       subsequent failure to compensate at the proper Overtime Rate of Pay.

17       40. Where ZALE fails to take into account all valued received in the calculation of Plaintiff’s and  
18       Class Members’ regular rates of pay, this results in a failure to pay all Overtime Compensation  
19       due.

20       41. The third cause of the violation was the uniform, company-wide use of a compensation “time  
21       shaving” policy. To wit, ZALE paid its employees pursuant to a standard compensation policy  
22       that systematically underpays employees, in an unfair and non-neutral manner. ZALE’s policy  
23       does *not* pay employees according to their actual computer log-in and log-out times, and thus,  
24       they are not paid for all hours worked. As an example, attached as **Exhibit B** is a copy of  
25       Plaintiff’s time records for the day October 14, 2012. On that day, Plaintiff worked 9 hours and  
26       3 minutes. Plaintiff should have been compensated for 1 hour and 3 minutes of overtime pay.  
27       However, her corresponding wage statement, attached hereto as **Exhibit C**, shows that she was  
28       only compensated for 1 hour of overtime during the pay period.

1 42. Where ZALE “time shaves” Plaintiff’s and Class Members’ work-times, it results in a failure to  
2 pay all wages due. Importantly, this failure to pay all wages also results in a failure to pay all  
3 Minimum Wage and Overtime Compensation due.

4 43. Additionally, ZALE deprived Class Members of the benefit of 29 C.F.R. 516.2, which requires  
5 that employers keep accurate record of wages due to employees and their hours worked each day,  
6 as a result of perpetrating the unlawful practices discussed, *supra*.

7 44. Section 13 of the FLSA, codified at 29 U.S.C. section 213, exempts certain categories of  
8 employees from overtime pay obligations. None of the FLSA exemptions apply to Plaintiff nor  
9 any other similarly situated employees.

10 45. Plaintiff and all other similarly situated employees are victims of a uniform and company wide  
11 compensation policy. Upon information and belief, ZALE applies/applied this uniform policy  
12 to all current and former nonexempt employees, employed within the last three years.

13 46. Plaintiff and all other similarly situated employees are entitled to damages equal to the mandated  
14 overtime premium pay within the three years preceding the filing of this Complaint, plus periods  
15 of equitable tolling, because ZALE acted willfully and knew, or showed reckless disregard of  
16 whether, its conduct was prohibited by the FLSA.

17 47. ZALE has acted neither in good faith nor with reasonable grounds to believe that its actions and  
18 omissions were not a violation of the FLSA, and as a result thereof, Plaintiff and all other  
19 similarly situated employees are entitled to recover an award of liquidated damages in an amount  
20 equal to the amount of unpaid overtime pay described pursuant to Section 16(b) of the FLSA,  
21 codified at 29 U.S.C. section 216(b). Alternatively, should the Court find ZALE did act with  
22 good faith and reasonable grounds in failing to pay overtime compensation, Plaintiff and all other  
23 similarly-situated employees are entitled to an award of prejudgment interest at the applicable  
24 legal rate.

25 48. As a result of the aforementioned willful violations of the FLSA’s overtime pay provisions,  
26 overtime compensation has been unlawfully withheld by ZALE from Plaintiff and all other  
27 similarly situated employees. Accordingly, ZALE is liable for compensatory damages pursuant  
28 to 29 U.S.C. section 216(b), together with an additional amount as liquidated damages,

prejudgment and post-judgment interest, reasonable attorney's fees and costs of this action.

**COUNT II**

5 49. Plaintiff re-asserts and re-alleges the allegations set forth in paragraphs 1 through 48.

6 50. Plaintiff alleges that ZALE violated, and continues to violate, the California Labor Code in  
7 various respects. The specific allegations of California Labor Code violations are as follows:

8 A. ZALE failed to provide overtime compensation to Plaintiff and all other class members  
9 in a compliant manner, due to Defendant's uniform compensation policy, in violation  
10 of California Labor Code section 510(a) and 1194;

11 B. ZALE failed to provide accurate itemized wage statements to Plaintiff and all other  
12 class members, in violation of California Labor Code section 226(a);

13 C. ZALE failed to possess Meal and Rest Period policies that were compliant with  
14 California law, in that they do not provide all rights statutorily-proscribed. Further,  
15 ZALE failed to provide uninterrupted Meal and Rest Periods to Class Members, in  
16 violation of California Labor Code sections 226.7, 512 and IWC Wage Order 7-2001;  
17 and,

18 D. ZALE failed to comply with California Labor Code section 203(a) with respect to  
19 Plaintiff and all other class members who were discharged, or who quit employment.

20 51. Because of ZALE's failures as alleged herein, Plaintiff and all other class members did not  
21 receive compensation for all hours actually worked for ZALE, and have been damaged.

22 52. Broader than the overtime requirements set forth in the FLSA, California Labor Code section  
23 510(a) provides, in pertinent part, the following: "**Eight hours of labor constitutes a day's**  
24 **work.** Any work in excess of eight hours in one workday and any work in excess of 40 hours  
25 in any one workweek and the first eight hours worked on the seventh day of work in any one  
26 workweek shall be compensated at the rate of no less than one and one-half times the regular rate  
27 of pay for an employee." *Id.* (emphasis added).

28 53. California Labor Code section 1194 sets forth, in pertinent part, the following: "any employee

1 receiving less than the legal minimum wage or the legal overtime compensation applicable to  
2 the employee is entitled to recover in a civil action the unpaid balance of the full amount of this  
3 minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees,  
4 and costs of suit."

5 54. ZALE violated Labor Code sections 510(a) and 1194 by failing to timely and accurately provide  
6 overtime compensation to Plaintiff and all other class members. Plaintiff asserts ZALE's  
7 practice results in the failure to compensate its employees properly for all their overtime work.  
8 55. Specifically, Defendant's uniform policy and practice is to use an illegal "time shaving" policy,  
9 whereby the Plaintiff and all other class members were not compensated for all time recorded  
10 on their time records. As an example, attached as **Exhibit B** is a copy of Plaintiff's time records  
11 for the day October 14, 2012. On that day, Plaintiff worked 9 hours and 3 minutes. Plaintiff  
12 should have been compensated for 1 hour and 3 minutes of overtime pay. However, her  
13 corresponding wage statement, attached hereto as **Exhibit C**, shows that she was only  
14 compensated for 1 hour of overtime during the pay period.  
15 56. An additional overtime violation occurs where Defendant failed to properly pay all overtime  
16 compensation due to Plaintiff due to Defendant's failure to properly calculate Plaintiff's regular  
17 rates of pay. Both California and federal law require commissions to be included in the regular  
18 rate of pay. 29 CFR 778.117 *et. seq*; *Huntington Memorial Hosp. v. Super. Ct.*, (2005) 131  
19 Cal.App.4th 893, 905; see also DLSE 2002 Enforcement Policies & Interpretations Manual  
20 (Revised), 49.1-49.1.2.2. The improper calculation of the regular rate of pay leads to the failure  
21 to calculate the proper overtime rate of pay, and the subsequent failure to compensate the proper  
22 overtime wages.  
23 57. Plaintiff is informed and believes and thereon alleges that Defendant failed to take into account  
24 the value of the commissions she received in calculating Plaintiff's and all other nonexempt  
25 employees' regular rates of pay. As a direct consequence, where Plaintiff and all other  
26 nonexempt employees worked in excess of eight hours in a workday and forty hours in a  
27 workweek, Defendant failed to pay Plaintiff and all other nonexempt employees all overtime  
28 compensation due because Defendant was paying at a lesser rate than that which is required by

1 law. As an example, during the pay period in **Exhibit B**, Ms. Tapia received \$59.65 in  
 2 commission, however, she was only compensated at \$15 per hour for her 1.0 overtime hours (1.5  
 3 multiplied by her \$10/hour base pay). Because Ms. Tapia's regular rate of pay should have been  
 4 \$12.51 [ $\$10 \times 23.75$  (total hours) =  $\$237.50 + \$59.65 = \$297.15 / 23.75 = \$12.51$ ], her overtime  
 5 should have been \$18.77 [1.5 x \$12.51]. Accordingly, by ZALE's failing to include her  
 6 commission into her regular rate of pay for purposes of paying overtime compensation, Ms.  
 7 Tapia lost \$3.77 for this pay period, alone.

8 58. California Labor Code section 226 provides, in pertinent part, the following: "Every employer  
 9 shall, semimonthly or at the time of each payment of wages, furnish each of his or her  
 10 employees, either as a detachable part of the check, draft, or voucher paying the employee's  
 11 wages, or separately when wages are paid by personal check or cash, an accurate itemized  
 12 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee .  
 13 . . [and] (5) net wages earned."

14 59. As a direct result of Defendant's uniform "time shaving" policy discussed above, and  
 15 Defendant's failure to take into account Ms. Tapia's commissions when calculating her regular  
 16 rate of pay for purposes of calculating overtime compensation, ZALE failed to provide accurate  
 17 itemized wage statements to Plaintiff, in violation of California Labor Code section 226 in that,  
 18 as an example, the gross wages earned, total hours worked, and net wages earned are all  
 19 undervalued.

20 60. California Labor Code section 203(a) provides, in pertinent part, the following: "If an employer  
 21 willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages  
 22 of the employee shall continue as a penalty from the due date thereof at the same rate until paid  
 23 or until an action therefor is commenced; but the wages shall not continue for more than 30 days.  
 24 An employee who secretes or absents himself or herself to avoid payment to him or her, or who  
 25 refuses to receive the payment when fully tendered to him or her, including any penalty then  
 26 accrued under this section, is not entitled to any benefit under this section for the time during  
 27 which he or she so avoids payment."

28 61. California Labor Code section 201(a) provides, in pertinent part, the following: "If an employer

discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

62. As a direct result of Defendant's uniform "time shaving" policy, and Defendant's failure to take into account commissions when calculating the regular rate of pay for purposes of calculating overtime compensation, ZALE failed to pay Plaintiff and all other Class Members statutorily compliant payment of wages upon discharge, suffered injury and damage as a result.
63. Moreover, under applicable state law, "No employer shall employ any person for a work period of more than 5 (five) hours without a meal period of not less than 30 minutes. . . ." 8 Cal. Code Regs. § 11070 (11)(A)(emphasis added); see also Lab. Code § 512(a). Unless the employee is relieved of all duty during a thirty (30) minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. 8 Cal. Code Regs. § 11070(11)(C). An employer who fails to provide meal periods as required by an applicable Wage Order must pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that the meal or rest period was not provided. Lab. Code § 226.7(b); 8 Cal. Code Regs. § 11070 (11)(D). An employer is obligated to record employee meal periods. 8 Cal. Code Regs. § 11070(7)(A)(3). "If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided." *Brinker Rest. Corp. et. al. v. Super. Ct.*, No. S166350 (Cal. Sp. Ct. Apr. 12, 2012) (conc. opn. of Werdegar, J.).
64. California Code of Regulations, title 8, section 11070(12)(A) provides, in pertinent part, the following: "Every employer shall authorize and permit all employees to take rest periods . . . . The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof."
65. Within the operative time period, Defendant failed provide Plaintiff and all Class Members statutorily compliant meal and rest periods, and they suffered injury and damage as a result. These violations were the result of, among other things, Defendants failure to possess compliant written policies pertaining to the provision of meal and/or rest periods. For example, Plaintiff and all other class members were not provided with a rest period for every four hours worked,

1 or “major fraction thereof.” Additionally, Plaintiff and all other class members were not  
 2 provided with an initial meal period before the start of their sixth hour of work, or a second meal  
 3 period before the start of an their eleventh hour of work, in a day.

4 66. Defendant willfully failed and refused to pay Plaintiff and all other class members one additional  
 5 hour of pay at their regular rate of pay for each workday that a meal or rest period was not  
 6 provided, as required by Labor Code section 226.7 and IWC Wage Order 7 (11)(D) and (12)(B).

7 67. Plaintiff is informed and believes and thereon allege that the examples set forth above are typical  
 8 of all nonexempt employees. As a direct result of Defendant’s willful failure and refusal to  
 9 comply with the California Labor Code, Plaintiff and other Class Members have suffered injury,  
 10 loss, and harm all to their damages in a sum according to proof. On behalf of the Class, Plaintiff  
 11 hereby seeks compensatory damages, back pay (or penalty), pre-judgment interest, and other  
 12 remedies set forth below.

13 68. ZALE’s failure to pay the correct amount of straight-time hourly wages permits a civil suit to  
 14 recover wages due to Plaintiff and all other class members under California Labor Code section  
 15 218, as well as recovery of interest, reasonable attorneys’ fees, and costs of suit pursuant to, *inter*  
 16 *alia*, California Labor Code sections 218.5 and 218.6.

17 69. ZALE’s failure to pay the correct amount of overtime wages permits a civil suit to recover the  
 18 unpaid balance of the full amount of this overtime compensation due to Plaintiff and all other  
 19 Class Members, as well as recovery of interest, reasonable attorneys’ fees, and costs of suit,  
 20 pursuant to California Labor Code section 1194.

21 **COUNT III**

22 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 17200**  
 23 **(Brought against ZALE and DOES 1-50 by Plaintiff,  
 individually and on behalf of all others similarly situated)**

24 70. Plaintiff re-asserts and re-alleges the allegations set forth in paragraphs 1 through 69.

25 71. ZALE’s actions, including but not limited to the failure to maintain accurate employee time  
 26 records, the failure to pay all wages earned, and the failure to pay overtime compensation,  
 27 constitute fraudulent and/or unlawful and/or unfair business practices in violation of California’s  
 28 Unfair Competition Law, codified under California Business & Professions Code section 17200



1 business act or practice.

2 78. Plaintiff's allegations herein are based upon Defendant's institutional business acts and practices.

3 79. Defendant's acts and practices, as described herein above, are unlawful and unfair, in that they

4 violate the Labor Code, IWC wage order(s), and the California Unemployment Insurance Code.

5 80. As a direct result of Defendant's unlawful and unfair business acts and practices, Plaintiff and

6 all other class members have been denied wages earned and the right to collect unemployment

7 insurance benefits, and have therefore been damaged in an amount to be proven. Accordingly,

8 Plaintiff prays for restitution in an amount to be proven, and injunctive relief.

9 81. Plaintiff is informed and believes and thereon alleges, that Defendant's unlawful and unfair

10 business practices, alleged above, are continuing in nature and are widespread.

11 82. On behalf of the ascertainable class, Plaintiff respectfully requests an injunction against

12 Defendant to enjoin it from continuing to engage in the illegal conduct alleged herein.

13 83. On behalf of the ascertainable class, Plaintiff respectfully requests restitution.

14 84. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is

15 presently unaware of the precise amount of these expenses and fees and prays leave of court to

16 amend this first amended complaint when the amounts are more fully known.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, on her own behalf and on behalf of all others similarly situated, prays

19 for relief as follows:

20 1. An order enjoining ZALE from pursuing the fraudulent and/or unlawful and/or unfair policies,

21 acts and practices complained of herein;

22 2. An order certifying that Count I of the action may be maintained as a collective action pursuant

23 to 29 U.S.C. section 216(b);

24 3. An order certifying that Counts II and III of the action may be maintained as an "opt-out" class

25 action pursuant to Federal Rule of Civil Procedure 23;

26 4. Compensatory and statutory damages, penalties and restitution, as appropriate and available

27 under each cause of action, in an amount to be proven at trial based on, *inter alia*, the unpaid

28

1       balance of compensation owed by ZALE;

2       5. Liquidated damages pursuant to, *inter alia*, 29 U.S.C. section 216(b) and California Labor Code

3                    section 1194.2;

4       6. Waiting time penalties pursuant to, *inter alia*, California Labor Code section 203;

5       7. Statutory penalties pursuant to, *inter alia*, California Labor Code section 226;

6       8. Attorneys' fees pursuant to, *inter alia*, 29 U.S.C. section 216(b), and California Labor Code

7                    sections 218.5, 226, 1194;

8       9. Costs of this suit pursuant to, *inter alia*, 29 U.S.C. section 216(b), and California Labor Code

9                    sections 218.5, 226 1194;

10      10. Pre- and post-judgment interest pursuant to, *inter alia*, California Labor Code section 218.6; and

11      11. Such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

14 Plaintiff hereby requests that this matter be heard and decided by trial by jury.

16 | Dated: July 3, 2013

## SULLIVAN LAW GROUP, APC

s/ Lara A. Prodanovich

Lara A. Prodanovich  
Lprodanovich@sullivanlawgroupapc.com  
Attorney for Plaintiff NAOMI TAPIA, individually  
and on behalf of other members of the general  
public similarly situated

# Exhibit A

ZALE CORP USA

Report Date: 06-MAR-2013

## Starting Pay Date:01-JUN-2012 Ending Pay Date:15-NOV-2012

Rpt Seq Id:	2	Tax Filing	Status	Exemptions	Pay Process:	QuickPay Run
Employee Name:	Tapia , Naomi J	Federal	Single	0	Run Type:	Regular
Assignment No:	1038257	CA	Single/Married w/	0	Pay Rate:	0.00
Payroll Name:	Zale Hourly				Gross Earnings:	762.50
Consolidation:	Quickpay Zale Delaware				Gross Pay:	762.50
GRN Name:	Zale Delaware, Inc.				Net Pay:	129.38
Organization:	001654 ZALES JEWELERS				Net Payments:	649.69
Location:	01654				Date Paid:	01-JUL-2012

Payment Method: ZALE DELAWARE NACHA Date Paid: 01-JUL-2012 Check/Advice1051825978  
 Bank Name: Zale Paycard Routing No.: 084003997 Account No.: \*\*\*\*\* 1582 Amount: 649.69

Hours: Current  
 PP Adj Reg Hour 10.50  
 Reg Hrs Wk2 Hou 25.00

Earnings: Reg Hrs Wk1 105.00  
 PP Adj Reg 250.00  
 Reg Hrs Wk2

Deductions: Reg Hrs Wk1 407.50  
 FIT 62.10  
 SS 32.03

MEDICARE SDI-CA 11.05  
 MEDICARE SDI-CA 7.63

ZALE CORP USA

Report Date: 06-MAR-2013

## Starting Pay Date:01-JUN-2012 Ending Pay Date:15-NOV-2012

Rpt Seq Id:	3	Tax Filing	Status	Exemptions	Pay Process:	Run
Employee Name:	Tapia , Naomi J	Federal	Single	0	Run Type:	Regular
Assignment No:	1038257	CA	Single/Married w/	0	Pay Rate:	0.00
Payroll Name:	Zale Hourly				Gross Earnings:	412.50
Consolidation:	ZALE CORP USA				Gross Pay:	412.50
GRN Name:	Zale Delaware, Inc.				Net Pay:	352.09
Organization:	001654 ZALES JEWELERS				Net Payments:	352.09
Location:	01654				Date Paid:	12-JUL-2012

Payment Method: ZALE DELAWARE NACHA Date Paid: 12-JUL-2012 Check/Advice1054427098  
 Bank Name: Zale Paycard Routing No.: 084003997 Account No.: \*\*\*\*\* 1582 Amount: 352.09

Hours: Current  
 Reg Hrs Wk1 Hou 20.50

Earnings: Reg Hrs Wk2 Hou 15.25  
 Hol Wkd Wk2 5.50

Deductions: Reg Hrs Wk2 152.50  
 Hol Wkd Wk2 55.00  
 Reg Hrs Wk2 32.98  
 FIT MEDICARE 5.99

## **Exhibit B**

EMPLOYEE	BUS_DATE	STORE_ID	ASSOC_IN	ASSOC_OUT	MGR_IN	MGR_OUT	SOURCE
1038257	08/25/2012 00:00:00	1,654	0900	1403	0900	1403	CATS
1038257	08/25/2012 00:00:00	1,654	0900	1403	0900	1403	CATS
1038257	08/26/2012 00:00:00	1,654			1000	1300	CATS
1038257	08/26/2012 00:00:00	1,654			1330	1700	CATS
1038257	08/27/2012 00:00:00	1,654	0902	1345			CATS
1038257	08/27/2012 00:00:00	1,654	1412	1703			CATS
1038257	08/29/2012 00:00:00	1,654	0901	1400			CATS
1038257	09/02/2012 00:00:00	1,654	1001	1503			CATS
1038257	09/05/2012 00:00:00	1,654	0905	1407			CATS
1038257	09/09/2012 00:00:00	1,654	0902	1007			CATS
1038257	09/09/2012 00:00:00	1,654	0902	1007			CATS
1038257	09/09/2012 00:00:00	1,654	0902	1100			CATS
1038257	09/10/2012 00:00:00	1,654	1629	2130			CATS
1038257	09/10/2012 00:00:00	1,654	1629	2131			CATS
1038257	09/11/2012 00:00:00	1,654	0900	1415			CATS
1038257	09/14/2012 00:00:00	1,654	0900	1400			CATS
1038257	09/16/2012 00:00:00	1,654	1000	1500			CATS
1038257	09/17/2012 00:00:00	1,654	1627	2141			CATS
1038257	09/17/2012 00:00:00	1,654	1627	2140	1627	2140	CATS
1038257	09/18/2012 00:00:00	1,654	0904	1359			CATS
1038257	09/23/2012 00:00:00	1,654	0705	1238			CATS
1038257	09/23/2012 00:00:00	1,654	1306	1505			CATS
1038257	09/23/2012 00:00:00	1,654	1306	1505			CATS
1038257	09/23/2012 00:00:00	1,654	0705	1238			CATS
1038257	09/24/2012 00:00:00	1,654	1629	2135			CATS
1038257	09/24/2012 00:00:00	1,654	1629	2136	1629	2136	CATS
1038257	09/25/2012 00:00:00	1,654	0859	1402			CATS
1038257	09/26/2012 00:00:00	1,654	0900	1411			CATS
1038257	09/27/2012 00:00:00	1,654	0902	1400			CATS
1038257	09/28/2012 00:00:00	1,654	0900	1412			CATS
1038257	09/30/2012 00:00:00	1,654	1000	1516			CATS
1038257	10/03/2012 00:00:00	1,654	0905	1401			CATS
1038257	10/07/2012 00:00:00	1,654			1930	2229	CATS
1038257	10/09/2012 00:00:00	1,654	1631	2141	1631	2141	CATS
1038257	10/09/2012 00:00:00	1,654	1631	2140			CATS
1038257	10/10/2012 00:00:00	1,654	0900	1412			CATS
1038257	10/14/2012 00:00:00	1,654	1013	1458			CATS
1038257	10/14/2012 00:00:00	1,654	1900	2318	1900	2318	CATS
1038257	10/14/2012 00:00:00	1,654	1900	2317			CATS
1038257	10/15/2012 00:00:00	1,654	1631	2134	1631	2134	CATS
1038257	10/15/2012 00:00:00	1,654	1631	2133			CATS
1038257	10/21/2012 00:00:00	1,654	1003	1511			CATS
1038257	10/21/2012 00:00:00	1,654	1003	1511			CATS
1038257	10/22/2012 00:00:00	1,654	0951	1417			CATS

# **Exhibit C**

Starting Pay Date: 01-JUN-2012 Ending Pay Date: 15-NOV-2012

Rpt Seq Id:	11	Tax Filing Status:	Exemptions:	Pay Process:	Run
Employee Name:	Tapia , Naomi J	Federal	0	Run Type:	Regular
Assignment No:	1038257	Single	0	Pay Rate:	0 .00
Payroll Name:	ZALE HOURLY	Single/Married w/	0	Gross Earnings:	302.15
Consolidation:	ZALE CORP USA			Gross Pay:	302.15
GRN Name:	Zale Delaware, Inc.			Net Pay:	260.11
Organization:	001654 ZALES JEWELERS			Net Payments:	260.11
Location:	01654			Date Paid:	01-NOV-2012

Payment Method: ZALE DELAWARE NACHA Date Paid: 01-NOV-2012 Check/Advice:1091478910  
 Bank Name: Zale Paycard Routing No.: 084003997 Account No.: \*\*\*\*\*1582 Amount: 260.11  
 Hours: Current

Reg Hrs Wk2 Hou	9.75	Reg Hrs Wk1 Hou	13.00
Earnings:		OT Hourly Wk1 H	1.00
Comm Wk2	59.65	Reg Hrs Wk1	130.00
Reg Hrs Wk2	97.50	OT Wk1	15.00
Deductions:			
FIT	21.95	MEDICARE	4.38
SS	12.69	SDI-CA	3.02

ZALE CORP USA

Report Date: 06-MAR-2013 Payroll Register

Starting Pay Date: 01-JUN-2012 Ending Pay Date: 15-NOV-2012

Rpt Seq Id:	12	Tax Filing Status:	Exemptions:	Pay Process:	Run
Employee Name:	Tapia , Naomi J	Federal	0	Run Type:	Regular
Assignment No:	1038257	Single	0	Pay Rate:	0 .00
Payroll Name:	ZALE HOURLY	Single/Married w/	0	Gross Earnings:	0 .00
Consolidation:	ZALE CORP USA			Gross Pay:	0 .00
GRN Name:	Zale Delaware, Inc.			Net Pay:	0 .00
Organization:	001654 ZALES JEWELERS			Net Payments:	0 .00
Location:	01654			Date Paid:	15-NOV-2012

Hours: Current

Earnings:  
 Deductions: